



PUBLIC NOTICE

Federal Communications Commission
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DA 10-1036
June 30, 2010

MEDIA BUREAU ACTION

COMMISSION SEEKS COMMENT ON APPLICATION BY DISH NETWORK FOR CERTIFICATION AS A QUALIFIED CARRIER PURSUANT TO THE SATELLITE TELEVISION EXTENSION AND LOCALISM ACT OF 2010

MB Docket # 10-124

Responses due: July 20, 2010

Replies due: July 30, 2010

On June 30, 2010 DISH Network (“DISH”) filed an Application for Certification as a qualified carrier pursuant to the Satellite Television Extension and Localism Act of 2010 (“STELA”).¹ DISH’s application describes the initiation of local television packages available in all 210 markets for the first time. As required by STELA, the Commission seeks comment on DISH’s application.²

STELA, which amends certain sections of the Copyright Act and the Communications Act, addresses, in major part, the retransmission of distant, out-of-local-market television broadcast signals by satellite to eligible subscribers. Section 105 of STELA provides that a satellite carrier that provides local-into-local television broadcast signals to all 210 Designated Market Areas (“DMAs”) in the United States may be deemed a “qualified carrier.” A qualified carrier will be entitled to a waiver of a previously issued court injunction that prohibits such carrier from using the compulsory copyright license to offer any distant television broadcast signals to its subscribers.³ In 2006, Echostar Communications Corporation, DISH’s former parent company, was permanently enjoined from offering distant signals.⁴ Waiver of this injunction would allow DISH to retransmit the signals of out-of-market television stations to eligible subscribers, including providing subscribers in all local markets in the country with out-of-market

¹ The Satellite Television Extension and Localism Act of 2010 (STELA) § 206, Pub. L. No. 111-175, 124 Stat 1218 (2010) (§ 206 codified as amended at 47 U.S.C. § 342, other STELA amendments codified in scattered sections of 17 and 47 U.S.C.); *see also* STELA § 105, amending 17 U.S.C. § 119 (g). STELA was enacted on May 27, 2010 (S. 3333, 111th Cong.).

² 47 U.S.C. § 342(c).

³ STELA § 105, amending 17 U.S.C. § 119(g)(1).

⁴ *CBS Broadcasting Inc. v Echostar Communications Corporation*, 472 F.Supp.2d 1367 (S.D. Fla. 2006).

network affiliates if there are no affiliates of that network available in-market.⁵ Section 206 of STELA amends the Communications Act and sets forth the criteria for the Commission to use to determine whether a satellite carrier meets the statutory factors necessary to be certified as a qualified carrier.⁶

The Commission must first determine if the “satellite carrier is providing local service pursuant to the statutory license under section 122 ...in each designated market area.”⁷

Then, “with respect to each designated market area in which such satellite carrier was not providing such local service as of the date of enactment of the Satellite Television Extension and Localism Act of 2010” the Commission must determine whether “the satellite carrier’s satellite beams are designed, and predicted by the satellite manufacturer’s pre-launch test data, to provide a good quality satellite signal to at least 90 percent of the households in each such designated market area based on the most recent data released by the United States Census Bureau.”⁸

The Commission must further determine whether there “is no material evidence that there has been a satellite or sub-system failure subsequent to the satellite’s launch that precludes the ability of the satellite carrier to satisfy” these requirements.⁹ STELA sets out the information that a satellite carrier must provide in an application for certification.¹⁰ Such information includes:

- 1) Affidavit that the carrier is providing local service in all DMAs pursuant to the statutory license provided for in Section 122 of Title 17, United States Code, and a list of those markets in which it provided such service as of the date of the enactment of STELA.¹¹

- 2) For each market not served prior to STELA’s enactment:

Identification of each such market and the location of its local receive facility;

Data showing the number of households, and maps showing the geographic distribution thereof, in each such designated market area based on the most recent census data released by the United States Census Bureau;

Maps, with superimposed effective isotropically radiated power predictions obtained in the satellite manufacturer’s pre-launch tests, showing that the contours of the carrier’s satellite beams as designed and the geographic area that the carrier’s satellite beams are designed to cover are predicted to provide a good quality satellite signal to at least 90

⁵ See STELA § 105, amending 17 U.S.C. § 119 (g)(2).

⁶ 47 U.S.C. § 342(a).

⁷ 47 U.S.C. § 342(a)(1).

⁸ 47 U.S.C. § 342(a)(2)(A). The effective date of STELA, and its enactment date for most purposes, is February 27, 2010. See STELA § 307(a).

⁹ 47 U.S.C. § 342(a)(2)(B).

¹⁰ 47 U.S.C. § 342(b).

¹¹ 47 U.S.C. § 342(b)(1).

percent of the households in such designated market area based on the most recent census data released by the United States Census Bureau;

For any satellite relied upon for certification under this section, an affidavit stating that there have been no satellite or sub-system failures subsequent to the satellite's launch that would degrade the design performance to such a degree that a satellite transponder used to provide local service to any such designated market area is precluded from delivering a good quality satellite signal to at least 90 percent of the households in such designated market area based on the most recent census data released by the United States Census Bureau;

Any additional engineering, designated market area, or other information the Commission considers necessary to determine whether the Commission shall grant a certification.¹²

STELA defines the term "good quality satellite signal" as follows:

"(i) a satellite signal whose power level as designed shall achieve reception and demodulation of the signal at an availability level of at least 99.7 percent using—

(I) models of satellite antennas normally used by the satellite carrier's subscribers; and

(II) the same calculation methodology used by the satellite carrier to determine predicted signal availability in the top 100 designated market areas; and

(ii) taking into account whether a signal is in standard definition format or high definition format, compression methodology, modulation, error correction, power level, and utilization of advances in technology that do not circumvent the intent of this section to provide for non-discriminatory treatment with respect to any comparable television broadcast station signal, a video signal transmitted by a satellite carrier such that—

(I) the satellite carrier treats all television broadcast stations' signals the same with respect to statistical multiplexer prioritization; and

(II) the number of video signals in the relevant satellite transponder is not more than the then current greatest number of video signals carried on any equivalent transponder serving the top 100 designated market areas."¹³

STELA requires the Commission to provide 30 days for public comment on a certification request and to grant or deny such a request within 90 days after the date on which it was filed.¹⁴ In compliance with the statute, parties may file comments on the certification request on or before July 20, 2010 and replies on or before July 30, 2010. Please place the docket number, MB 10-124, on all filings. Parties should note that the statute expressly authorizes the Commission to request "any additional engineering, designated market area, or other information the Commission considers necessary to determine whether the Commission shall grant a certification."¹⁵ Such requests and responses will be available in the Commission's Electronic Comment Filing System ("ECFS") and parties are encouraged to monitor that system to view any filings made by DISH to supplement its application.

¹² 47 U.S.C. § 342(b)(2).

¹³ 47 U.S.C. § 342(e)(2).

¹⁴ 47 U.S.C. § 342(c).

¹⁵ 47 U.S.C. § 342(b)(2)(E).

Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs/>. Filers should follow the instructions provided on the website for submitting comments. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number: MB Docket No. 10-124.

Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

In addition, one copy of each submission must be sent to the following:

- The Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone 1-800-378-3160, e-mail fcc@bcpiweb.com;

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Availability of Documents. Documents in this proceeding will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com. The applications and subsequent filings are also available electronically through the Commission's ECFS, which may be accessed on the Commission's Internet website at <http://www.fcc.gov>.

Alternate formats of this Public Notice (computer diskette, large print, audio recording, or Braille) are available to persons with disabilities by contacting the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-7365 (TTY).

For further information, contact Lyle Elder of the Media Bureau, (202) 418-2120. Press inquiries should be directed to Janice Wise (202) 418-8165.

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